

The Honorable Richard A. Jones  
The Honorable James P. Donohue

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KYLE LYDELL CANTY,

Plaintiff,

vs.

CITY OF SEATTLE, et. al.,

Defendants.

No. 2:16-cv-01655-RAJ-JPD

KING COUNTY DEFENDANTS'  
CONSOLIDATED RESPONSE TO  
PLAINTIFF'S PENDING MOTIONS  
(DKTS. 79, 80, 82, 85, 86)

Noted: August 25, 2017

**I. RELIEF REQUESTED**

Defendants King County, Gail Bonicalzi, and Melinda Hasegawa (King County Defendants) request the Court deny Plaintiff's Motion to Suppress Evidence (Dkt. 79), Motion Regarding Policies and Procedures (Dkt. 80), and "Emergency" Motion Pursuant to Qualified Immunity (Dkt. 82), Motion Regarding Question of Law (Dkt. 85), and Motion Regarding Sixth Amendment Rights (Dkt. 86).

**II. FACTS RELEVANT TO MOTION AND EVIDENCE RELIED UPON**

Plaintiff has filed an amended civil right complaint naming King County and Designated Mental Health Providers Gail Bonicalzi and Melinda Hasegawa. Dkt. 38. Plaintiff alleges that King County Defendants violated his rights under the Fourth, Fifth and Eighth Amendments by having him civilly committed at Harborview Medical Center for 72 hours.

KING COUNTY DEFENDANTS' CONSOLIDATED  
RESPONSE TO PLAINTIFF'S PENDING MOTIONS  
(16-cv-01655-RAJ-JPD) - 1

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1 This motion relies upon the records and pleadings filed in this matter, the Declaration of  
2 Gail Bonicalzi, the Second Declaration of Samantha Kanner, and the Declaration of Melinda  
3 Hasegawa and Exhibit 1. The facts of Plaintiff's civil commitment are contained in the  
4 unredacted sealed Declaration of Melinda Hasegawa as well as Exhibit 1. Those facts will not  
5 be repeated in this response so that this pleading can be filed unredacted and unsealed.

### 6 **III. ARGUMENT**

#### 7 **A Motion to Suppress Evidence (Dkt. 79)**

8 Plaintiff's Motion to Suppress Evidence appears to be made in response to King County  
9 Defendants providing this Court with notice of Plaintiff's recent conviction for assaulting two police  
10 officers as it was relevant to Plaintiff's claim of irreparable harm in his request for injunctive relief.  
11 Plaintiff is again prematurely seeking an evidentiary ruling. King County Defendants ask this court  
12 to deny this motion. Substantively, Plaintiff's request to suppress relies solely on his assertion that  
13 his Second Amended Complaint does not mention the assaults of police officers for which he was  
14 recently convicted in King County Superior Court. Further, he cites no authority supporting the  
15 suppression of this type of information.

16 Plaintiff is correct that his Second Amended Complaint does not refer to these assaults but is  
17 incorrect regarding their possible relevance in this case. However, Plaintiff has asserted in his suit  
18 that he did not meet the criteria for involuntary commitment and that defendants committed him  
19 based on some vendetta or conspiracy. In rebuttal to that assertion, Federal Rule of Evidence  
20 404(b)(2) would permit evidence of Plaintiff's convictions to show motive, intent, and absence  
21 of mistake on the part of the defendants. Specifically, this evidence should be permitted to show  
22 that defendants' motive or intent was not one of malice and that defendants were not mistaken in  
23 their concern that Plaintiff posed a danger to police officers. As such, this evidence should be  
permitted to be heard by any trier of fact in this case.

#### **B. Motion Pursuant to Question of Law (Dkt. 85)**

1 Plaintiff's motion "Pursuant to Question of Law" fails to identify the relief he is seeking  
 2 and therefore does not comply with Fed.R.Civ.P. 7(b)(1)(C). King County Defendants are  
 3 unable to respond to this motion fully because they are not clear on what Plaintiff is seeking.  
 4 Plaintiff references a claim that he filed a motion for default against King County Defendants but  
 5 no such motion has been filed or served on King County Defendants. *Second Declaration of*  
 6 *Samantha Kanner*, ¶3. Further, as King County Defendants have answered, default judgment is  
 7 not appropriate.

**C. Motion to Regarding Sixth Amendment Violations (Dkt. 86)**

8 Plaintiff's motion regarding his Sixth Amendment rights appears to be based entirely on  
 9 allegations that he was treated inappropriately during his criminal trial or detention awaiting trial  
 10 for the criminal case for which he was recently convicted.<sup>1</sup> (See Dkts. 73, 73-1). Claims  
 11 regarding his treatment or detention in that case are not at issue in this suit. (Dkts. 38, 83).  
 12 Further any claims regarding his detention are moot as Plaintiff has already been transferred to  
 13 the custody of the Washington State Department of Corrections. *Second Declaration of*  
 14 *Samantha Kanner*, ¶4. Likewise his claims regarding his criminal trial would be barred by *Heck*  
 15 *v. Humphrey*, 512 U.S. 477, 487, 114 S. Ct. 2364 (1994), because his motions necessarily imply  
 16 the invalidity of his conviction or sentence. As his Second Amended Complaint contains none of  
 these claims and as they would be moot or barred by *Heck v. Humphrey*.

**D. Motion Regarding Policies and Procedures (Dkt. 80) and "Emergency"**

**Motion Pursuant to Qualified Immunity (Dkt. 82)**

19 In so far as Plaintiff's motions may be construed to be asking for a dispositive ruling on  
 20 the issues in this case, King County Defendants ask that the court strike Plaintiff's motions as  
 21 they rely on factual assertions not supported by any evidence or in compliance with Fed.R.Civ.P.  
 22 56(c)(1) or LCR 7(d)(3). Both Plaintiff's motion Regarding Policies and Procedures (Dkt. 80),

23 <sup>1</sup> Counsel for King County Defendants has not seen Plaintiff's Exhibit 24 (Dkt. 86) as Plaintiff has not been serving undersigned counsel with copies of his motions. *Second Declaration of Kanner*, ¶3. The only documents King County Defendants have been able to see are those electronically filed with the court. *Id.*

1 and “Emergency” Motion Pursuant to Qualified Immunity (Dkt. 82) purport to make factual  
 2 assertions regarding whether or not defendants complied with the Involuntary Treatment Act and  
 3 whether or not they are entitled to qualified immunity but fail to provide any record of such facts.  
 4 Further, King County Defendants expressly deny those claimed facts by way of the Declarations  
 5 of Gail Bonicalzi and Melinda Hasegawa and Exhibit 1.<sup>2</sup>

6 Further, Plaintiff has requested that the court makes a finding that defendants have  
 7 violated the policies or procedures of RCW 71.05 but then provides no factual assertions that  
 8 defendants violated any portion of RCW 71.05.153. For example, Plaintiff describes that he  
 9 didn’t get a hearing regarding his involuntary commitment prior to July 8, 2016, however, a  
 10 person can be committed by a Designated Mental Health Provider for 72 hours prior to a hearing  
 11 being held. He further cites a number of other sections of the RCWs that are inapplicable to his  
 12 situation. For example, he cites to RCW 71.05.190 regarding transporting of a person not  
 13 admitted to a hospital. Plaintiff was admitted to Harborview Medical Center and was detained  
 14 under 71.05.153, thus section 190 is inapplicable. Likewise, Plaintiff was not reported to be  
 15 suicidal at any time and thus RCW 71.05.458 is also inapplicable. Plaintiff has failed to make  
 16 any showing that defendants violated any policies or procedures.

17 Alternatively, Plaintiff’s motions could be construed as seeking to strike defendants’  
 18 affirmative defenses. Rule 8(b) of the Federal Rules of Civil Procedure requires a party to state  
 19 “in short and plain terms its defenses to each claim asserted against it.” Fed.R.Civ.P. 8(b)(1)(A).  
 20 Pursuant to this court rule, King County Defendants have asserted the affirmative defense of  
 21 absolute and qualified immunity. Plaintiff has provided no legal rationale as to why defendants  
 22 would be prohibited from asserting any affirmative defenses. Given Plaintiff’s failure to support  
 23 his motion with both a factual record and legal authority, these motions should be denied.

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<sup>2</sup> King County Defendants intend to file Motions for Summary Judgment on these issues.

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**IV. CONCLUSION**

For the foregoing reasons, King County Defendants request that Plaintiff's motions be denied.

DATED this 18<sup>th</sup> day of August, 2017.

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By: /s/ Samantha D. Kanner  
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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on August 18, 2017, I electronically filed the foregoing document(s) along with a Proposed Order Denying Plaintiff's Pending Motions with the Clerk of the Court using the CM/ECF E-Filing System, thus electronically serving counsel for City of Seattle Defendants and caused a copy of the same documents to be served on the following party via Regular USPS Mail:

**Kyle Lydell Canty  
DOC #401358  
Washington Corrections Center  
PO Box 900  
Shelton, WA 98584**

I certify under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 18<sup>th</sup> day of August, 2017.

/s/Lindsey Macalalad  
LINDSEY MACALALAD  
Legal Secretary